

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.09.2020

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

H.C.P. No. 695 of 2020
&
Crl.M.P. No. 4983 of 2020

K. Ganesan ...Petitioner
S/o.V.Kalyanaraman

Vs.

1. The Commissioner of Police,
O/o. The Commissioner of Police,
Coimbatore City,
Coimbatore.
2. The Secretary to Government,
Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai - 9. ...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Habeas Corpus to call for the records relating to the order of detention against the petitioner's friend namely, M. Vinesh, S/o. Manoharan, in C.No. 34/G/IS/2020 dated 27.03.2020 on the file of the 1st respondent herein and quash the said order and direct the respondents to produce the body of the detenu, namely, M. Vinesh, S/o. Manoharan, now confined in Central Prison, Coimbatore, before this Court and set him at liberty.

For Petitioner :: Mr.G. Karthikeyan

For Respondents:: Mr.R. Prathapkumar,
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by N. KIRUBAKARAN,J.)

The matter is heard through videoconferencing.

2.The friend of the detenu has filed this Petition challenging the detention Order passed by the 1st respondent in in C.No. 34/G/IS/2020 dated 27.03.2020 based on the ground case.

3.Heard Mr. G. Karthikeyan, learned counsel appearing for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the Respondents.

4. It is seen from the records that the representation sent on behalf of the detenu has not been considered within the time frame and there is a delay of 9 days in considering and disposing of the representation.

5.In the decision in "C.Muthuvali Vs. The Principal Secretary to Government, Home Prohibition and Excise Department, Government of Tamil Nadu, Secretariat, Chennai - 600 009" reported in "[(2017) (1) MWN (Cr.) 270 (DB)]" it has been held that an unexplained delay of nine working days on the part of the Government in considering the representation rendered the detention illegal. Another Division Bench of this Court in "Samaiah Vs.The Secretary to Government" reported in "[(2007) (4) MWN (Cr.) 145]" has held that an unexplained delay of three days in disposal of the representation made by the detenu would be sufficient to set aside the detention order.

6.Further, a larger Bench of the Supreme Court in "Rekha Vs. The State of Tamil Nadu" reported in "2011 5 SCC 244" has held that "Preventive detention is by nature repugnant to democratic ideas and an anathema to the rule of law. No such law exists in the USA and in England (except during war time). However, Article 22(3)(b) of the Constitution of India permits preventive detention, we cannot hold it illegal but we must confine the power of preventive detention within very narrow limits, otherwise we will be taking away the great right to liberty guaranteed by Article 21 of the Constitution of India which was won after long, arduous, historic struggles".

7.Since there is an unexplained delay in considering the representation submitted by the detenu, the detention order passed by the 1st respondent is liable to be set aside.

8. Accordingly, the detention order passed by the 1st respondent in C.No. 34/G/IS/2020 dated 27.03.2020 is quashed and the Habeas Corpus Petition is allowed. The detenu viz., M. Vinesh, S/o. Manoharan, now confined in Central Prison, Coimbatore, is directed to be set at liberty forthwith unless his presence is required in connection with any other case. Connected CrI.M.P. is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
O/o. The Commissioner of Police,
Coimbatore City,
Coimbatore.
2. The Secretary to Government,
Prohibition & Excise Department,
Secretariat, Fort St. George,
Chennai - 9.
3. The Superintendent,
Central Prison, Coimbatore.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary to Government,
Public (Law and Order)
Fort ST.George, Chennai-9.

H.C.P. No. 695 of 2020

SSV(CO)
GMY(18/09/2020)

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